



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

formed is one which an individual would have the absolute right to commit."

To the busy practitioner, this book should be especially valuable. Every important modern case, dealing with the law of labor unions, appears to have been digested, while the voluminous Table of Contents and Index enable one easily to find the authorities upon any particular topic. Even the repetition of principles and citations, referred to above, is not without its advantages here.

F. M. B.

INDEPENDENT CONTRACTORS AND EMPLOYERS LIABILITY. By THEOPHILUS J. MOLL. Cincinnati: THE W. H. ANDERSON CO. 1910. pp. lvi, 378.

This book by Prof. Moll commences with a quotation from the late lamented Dean Huffcut's concise but admirable treatise on Agency. Immediately following this quotation, comes another quotation from the recent work of Mr. Street on Legal Liability. Then comes another lengthy quotation from Dean Huffcut; so on, almost *ad infinitum*.

Prof. Moll's book, in fact, consists for the greater part rather of excerpts from the writings of others and of lengthy quotations from leading authorities, than of original contributions, whether by way of analysis or by way of criticism.

In these days of the Deluge—for that seems the only way to characterize the constantly increasing over-production of legal literature of every kind—the only excuse for a book on a subject such as "Independent Contractors," already ably and adequately dealt with by others, must be found either in originality of thought and concept, or in a more than usually lucid and compact statement of the familiar principles.

The most charitable critic could hardly ascribe to this treatise of Prof. Moll any originality of treatment. The author seems quite devoid of that passion for the philosophy of the law, of that desire to penetrate into the true *ratio decidendi*, which should characterize the modern writer.

Nor are the form of the book and the treatment of the subject in any respect notable. When the author is not quoting from others (which is seldom), he is prolix, not always over-clear, and never literary.

At least two-thirds of Prof. Moll's work consists of verbatim quotations, or what amounts to the same thing, from Judge Thompson's Commentaries on the Law of Negligence, Mr. Labatt's Treatise on Master and Servant, or the same author's excellent and illuminating monographic notes in the Lawyers' Reports Annotated, from Prof. Burdick's Law of Torts, from Barrows on Negligence, or from Mr. Street's recent treatise on Legal Liability, which, by the way, is in many respects altogether admirable.

It is quite true that Prof. Moll frankly and freely acknowledges his indebtedness to these authors. The seventh chapter of the book, which discusses the employer's liability to his own servants, is derived almost in its entirety from Labatt on Master and Servant. This fact is acknowledged (p. 293), but this does not, it seems, justify a repetition in practically the same language of what another gifted author has already said.

The work, however, is not devoid of merit. In its favor this can be said: the historical method of treatment is frequently em-

ployed to considerable advantage. For example, the author's discussion of the early case of *Bush v. Steinman*¹ is excellent. He points out clearly that that case violated the simple rule of logic, that where one who lets a contract has no control over the employees of the contractor, he should not be treated as their master, but the independent contractor alone should be liable. The overthrow of the doctrine of this case is also ably developed. But for a summary of the present tendency regarding the doctrine, the author again refrains from original treatment, and quotes at great length from Mr. Labatt's valuable note to the case of *Salliotte v. Kingbridge Co.*²

The first half of Prof. Moll's book consists of an attempt to define independent contractors, and to differentiate them from agents and servants. The ground, of course, has been fully covered before. Prof. Burdick and numerous other authorities have made it quite clear that the decisive test is whether or not the employer had the *right to control* the conduct of the person doing the wrong. If he had, he is liable; otherwise, the rule of *respondeat superior* does not apply. If, in fine, the contractor represents the employer's will *only as to the result, and not as to the means*, he is an independent contractor and alone responsible for torts.

Prof. Moll apparently recognizes the soundness of this test (p. 19, 32, 37), for he quotes at great length from cases and from authors enunciating it. However, his own general statement of the rule (p. 18) is unsound.

The employer's "exceptional liability" for the torts of an independent contractor is made the subject of unusual classification by the author. He makes this exceptional liability depend, (1) on the character of the work, (2) on the character of the obligation, (3) on the conduct of the employer. Nothing seems gained by the adoption of this classification, and, in the writer's opinion, the value of the work for ready reference is thereby considerably impaired.

The index is excellent and the table of cases particularly full and complete. Cross-citations are employed and reference is made not only to the official series, but to the leading case-books and unofficial compilations, as well.

The book, as a whole, shows that the author is familiar with all of the case-law and, in fact, with all of the literature on his subject. It, therefore, seems particularly unfortunate that so little originality is demonstrated. The expression of the author's own views and a statement in the author's own language of the different principles, would have rendered Prof. Moll's book not only more valuable, but more refreshing and interesting as well. As it stands, it is a mere compilation of usually carefully chosen excerpts from cases and from leading authorities, sparsely interspersed with a few original sentences from the learned author,—exhibiting much erudition, which, alas, has in large measure gone to waste.

I. M. W.

CORPORATIONS. By J. S. RUMSEY. Albany: BANKS & Co. 1909. pp. 810.

This book contains, in addition to the New York Consolidated Corporation Laws, the text of the Rapid Transit Act, the Tax Law relating to corporations, Condemnation Law, General Construction

¹(1799) 1 B. & P. 404.

²(1903) 65 L. R. A., 620, 631-2.